

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC-SDNY
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DATE FILED: 7/18/19

FEN SONG CHEN,

Plaintiff,

v.

EDO SUSHI & GRILL, INC., *doing business*
as SUSHI EDO; KAI LIU; CHOE LIN; DEL
BELFESSA; PENNY CHEN; DANNY
TAM; YING LIU; JANE DOE; JOHN DOE,

Defendants.

No. 18-CV-6081 (RA)

ORDER

RONNIE ABRAMS, United States District Judge:

Plaintiff Fen Song Chen brought this action against Defendants Edo Sushi & Grill, Inc., Kai Liu, Choe Lin, Del Belfessa, Penny Chen, Danny Tam, Ying Liu, Jane Doe, and John Doe for alleged violations of the Fair Labor Standards Act (“FLSA”) and the New York Labor Law (“NYLL”). Presently before the Court is the parties’ proposed settlement agreement (the “Agreement”).¹

The Court, having reviewed the parties’ proposed agreement and fairness letter, finds that the settlement is fair and reasonable. Under the terms of the proposed settlement agreement, Defendants agree to pay Plaintiff a total of \$27,500.00 in exchange for the relinquishment of wage and hour claims. The total settlement amount is approximately 41% of Plaintiff’s damage calculations including liquidated damages. This amount is reasonable in light of the risks of trial and Plaintiff’s assessment of Defendants’ ability to pay. *See Beckert v. Ronirubinov*, No. 15-CV-

¹ Only Defendants Edo Sushi & Grill, Kai Liu, and Ying Liu are parties to this settlement agreement, but Plaintiff agrees his claims will be dismissed with prejudice as to all other defendants as well. *See Agreement* at 1.

1951, 2015 WL 8773460, at *2 (S.D.N.Y. Dec. 14, 2015) (approving a settlement of approximately 25 percent of the maximum possible recovery).

The Court also approves the requested award of attorneys' fees and costs. "In an FLSA case, the Court must independently ascertain the reasonableness of the fee request." *Gurung v. White Way Threading LLC*, 226 F. Supp. 3d 226, 229–30 (S.D.N.Y. 2016). A contingency fee award is presumptively valid where "the proposed fee amount is exactly one-third of the net settlement amount, which is an amount routinely approved under the percentage method" in this District. *Yunjian Lin v. Grand Sichuan 74 St Inc.*, No. 15-CV-2950, 2018 WL 3222519, at *5 (S.D.N.Y. July 2, 2018). The proposed settlement of \$27,500 allocates \$9,166.67 in fees and costs to Plaintiff's counsel, which amounts to approximately one-third of the settlement amount. The Court thus approves the proposed attorneys' fees under the percentage of the fund method.

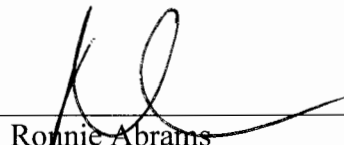
Plaintiff's release of claims is also fair and reasonable. "In FLSA cases, courts in this District routinely reject release provisions that 'waive practically any possible claim against the defendants, including unknown claims and claims that have no relationship whatsoever to wage-and-hour issues.'" *Gurung*, 226 F. Supp. 3d at 228 (citation omitted). The relevant provision in this case releases Plaintiff's claims, solely with respect to conduct that has arisen prior to the execution of the Agreement, "concerning wage and hour matters including overtime, unpaid wages, spread of hours, and any and all claims arising under the Fair Labor Standards Act, the New York Labor Law, and the Wage Theft Prevention Act during Plaintiff's alleged employment with Defendants." Agreement ¶ 2. The Agreement also makes clear that it does not prevent Plaintiff from filing a charge with any federal, state, or local fair employment practices agency. *Id.* Both of these provisions narrowly release wage and hour claims under FLSA and NYLL arising before the date of the Agreement, not all past or future claims by Plaintiff against Defendants.

CONCLUSION

For the reasons stated above, the Court approves the parties' settlement agreement. The Court dismisses the Complaint with prejudice in accordance with the settlement agreement. The Clerk of Court is respectfully directed to close this case.

SO ORDERED.

Dated: July 18, 2019
New York, New York



Ronnie Abrams
United States District Judge